

UNITY LUTHERAN CHRISTIAN ELEMENTARY SCHOOL

1600 North 40th Street
East St. Louis, IL 62204
Phone 618-874-6605 • Fax 618-874-2707
E-mail pmiller@unityesl.org

April 1, 2019

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
VIA FCC ELECTRONIC COMMENT FILING SYSTEM

Re **CC Docket No. 02-6**
Petition for Reconsideration
February 2019 USF Appeals Disposition Notice
Applicant: Unity Lutheran Christian Elementary School

Dear Ms. Dortch,

With this letter Unity Lutheran Christian Elementary School (“Petitioner”) respectfully requests that the Wireline Competition Bureau (“Bureau”) reconsider its decision in its *February 2019 USF Appeals Disposition Notice*¹⁰⁹ (“Notice”) denying Petitioner’s Petition for Reconsideration¹¹⁰ of a Bureau order¹¹¹ denying Petitioner’s waiver petition¹¹² seeking relief from the requirement to completely file and certify an application for funding under the Schools and Libraries Universal Service Support Mechanism within the filing window¹¹³.

In the Notice the Bureau erred in its statement that even prior to the March 6, 2015 effective date of a change in 47 CFR §54.720(a), “the rule has always held” that “requests for waivers and petitions for review must be filed within 60 days of the issuance of the decision at issue”, when in fact the opposite is true.

Petitioner therefore prays that the Bureau apply its rules and precedent as they existed on the March 5, 2015 waiver petition filing date, and that the Bureau grant the relief sought in the waiver petition.

¹⁰⁹ See *February 2019 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company* (DA 19-116, released 2/28/2019).

¹¹⁰ See Petitioner’s *Petition for Reconsideration* submitted electronically via ECFS on 4/27/2015.

¹¹¹ See *March 2015 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company* (30 FCC Rcd 2745, released 3/27/2015).

¹¹² See Petitioner’s waiver petition submitted electronically via ECFS on 3/5/2015.

¹¹³ See 47 CFR §54.507

Background

In an order published in the Federal Register on February 4, 2015¹¹⁴, the Commission amended 47 CFR §54.720 to provide that a waiver petition must be filed not more than 60 days after the antecedent notice by the Administrator of non-compliance with a Commission rule; pursuant to the language of the order and Commission rules¹¹⁵, the amended rule came into effect on March 6.

The earlier version of §54.720 provided a 60-day deadline only for an appeal – i.e., a pleading seeking to reverse an allegedly erroneous Administrator decision – and was silent regarding a waiver petition – i.e., a pleading seeking relief from the application of a provision of a Commission rule (as per the provisions of 47 CFR §1.3).

On March 5, 2015, Petitioner sought a waiver of the FCC Form 471 funding application filing deadline, seeking relief consistent with that granted under precedent Bureau orders.

Later that month the Bureau denied the waiver request, stating that the waiver request had been filed on March 6 – after the new rule had become effective – notwithstanding the fact that ECFS showed that the filing was made on March 5.

Petitioner immediately sought reconsideration of the erroneous finding regarding the ECFS submission date, and in February of this year the Bureau denied the waiver petition and petition for reconsideration under a new theory – that the provisions of the new rule coming into effect on March 6, 2015 were actually always in effect. It is this new theory for which Petitioner seeks reconsideration.

Discussion

*The relevant precedent order did not make a 60-day filing deadline a precedent special condition for a late-filed FCC Form 471 waiver grant. The Acorn Public Library Order*¹¹⁶, which set the special conditions which justify a waiver grant for a late-filed funding application, explicitly identified various circumstances which justify a requested waiver grant. Nowhere in the order is found a requirement or special condition that an applicant submit a waiver request within 60 days of Administrator's notification that a funding application has been submitted out-of-window.

The relevant precedent order explicitly granted relief to multiple petitioners who submitted petitions more than 60 days after an Administrator out-of-window notification. Regarding the applicability of a 60-day waiver-request filing deadline, it is not simply a matter of *Acorn Public Library's* silence on the matter. On the contrary, the order

¹¹⁴ 80 FR 5961, published 2/4/2015

¹¹⁵ 47 CFR §1.427(a)

¹¹⁶ At 23 FCC Rcd 15474 (2008)

granted several waivers for which requests were submitted after the passage of more than 60 days from an Administrator notification¹¹⁷. There is no way to reconcile the Bureau's assertion (that the 60-day filing deadline has always also applied to waiver requests) in its February 2019 *Streamlined Resolutions* order with the incontrovertible fact that the 60-day filing deadline *was not* applied to waiver requests in *Acorn*.

For completeness, we will note that although from time to time the Bureau has granted waivers of the provisions of §54.720(a) – for example, when an appeal is filed just a few days after the 60-day filing deadline – there was no §54.720(a) waiver grant in *Acorn Public Library*, and yet the late-filed funding application waivers were nevertheless granted. There is one and only one explanation – i.e., that the earlier version of §54.720(a), as per the plain language of the rule, applied only to appeals of Administrator decisions, and *did not* apply for requests for waivers of Commission rules.

The “clarification” cited in the Second Report and Order and Order on Reconsideration¹¹⁸ regarding a 60-day deadline for waiver petition submissions was not “merely clarifying what the rule has always held”¹¹⁹, but was rather clarifying the effect of the adoption of the new language for the rule. The object of the “clarification” – i.e., whether it is the effect of an existing policy which is clarified, or (in the alternative) the effect of the new rule language which is clarified – becomes unambiguously clear when one reads Footnote 336. That footnote *does not* refer to or cite any instance or precedent for the application of a filing deadline to a waiver request filed prior to the effective date of the new rule. On the contrary, the footnote refers to the language of the revised rule, the provisions of which would only become effective “thirty (30) days after the publication of this Report and Order and Order on Reconsideration in the Federal Register”¹²⁰.

¹¹⁷ E.g., see a 10/27/2006 filing by Wounded Knee School District, and a 12/28/2007 filing by Kalida Local School. For the Wounded Knee filing, more than 60 days passed after an Administrator out-of-window notification before that petitioner sought relief from the Administrator, and additional time passed before a waiver petition was submitted to the Commission – so more than 60 days passed after the out-of-window notification before the petitioner took any action whatsoever. (More examples exist, but two examples should be sufficient to show that the 60-day rule *did not apply* and *was not applied* to waiver petitions.)

¹¹⁸ At 29 FCC Rcd 15538, ¶133 (2014)

¹¹⁹ See *February 2019 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, *supra*.

¹²⁰ See *Second Report and Order and Order on Reconsideration (supra)*, ¶168

Ms. Marlene H. Dortch

April 1, 2019

Page 4 of 4

Relief sought

For the reasons stated in this letter, Petitioner therefore prays that the Commission apply its rules, precedent, and policy as they existed on the March 5 filing date, and grant the relief sought in the Petition for Waiver at the earliest possible date.

UNITY LUTHERAN CHRISTIAN ELEMENTARY SCHOOL

Paul Miller

Paul Miller

Director